

### REMARKS

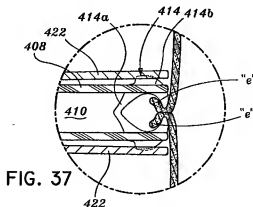
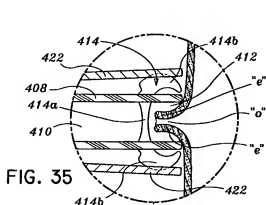
The present application has been reviewed in light of the Office Action dated July 24, 2007. Claims 10-28 are currently pending, claims 1-9 having been previously cancelled. By the present amendment, claims 10 and 16 have been amended and new claims 20-28 have been added for consideration. Applicants respectfully submit that these amendments and new claims add no new matter, are fully supported by the specification and are allowable over the prior art of record. In light of these amendments and the remarks that follow, early and favorable reconsideration and allowance of this application are respectfully requested.

Claims 10-17 and 19 stand rejected under 35 U.S.C. § 102(e) over U.S. Patent No. 5,910,155 to Ratcliff (hereinafter "Ratcliff"). It is respectfully submitted that the present invention embodied in claim 10 is patentable over Ratcliff. Independent claim 10 recites an apparatus for substantially closing a vascular opening in a vessel while permitting post operative blood flow through the vessel. The apparatus comprises, *inter alia*, a housing having proximal and distal ends and a defining longitudinal axis, at least two tissue engaging members longitudinally movable relative to said housing between a retracted position and an advanced position in which the at least two tissue engaging members are at least partially exposed from the housing, and at least two jaw members positioned adjacent said tissue engaging members and being movable independently thereof.

Ratcliff relates to an apparatus for closure of an opening in a vascular organ which includes, *inter alia*, a handle 406, an elongated portion 408 and a clip

forming mechanism 420. (See col. 18, lines 24-27; lines 66-67). The clip forming mechanism 420 includes a pair of manually operated levers 422 that are mounted to the outer surface of elongated portion 408 and movable in a radial direction to form surgical clips 414. (See col. 19, lines 1-9). During use, the vascular tissue is drawn into the device using a vacuum, for engagement by the clip. (See col. 19, lines 36-64).

In the Office Action, levers 422 and clips 414 were respectively characterized as the “jaw members” and “tissue engaging members” recited in claim 10. As disclosed in Ratcliff and seen below in FIGS. 35 and 37, during actuation of the Ratcliff device, the “tissue engaging members” 414 are moved radially inward, along with the “jaw members” 422, but, not longitudinally. The supposed “tissue engaging members” 414 never extend beyond the distal end of the device, and the so-called “jaw members” 422 are moved inwardly to deform the clip, therefore being incapable of capturing and drawing in the vascular tissue. Accordingly, Applicants respectfully submit that Ratcliff fails to disclose “at least two tissue engaging members longitudinally movable relative to said housing between a retracted position and an advanced position in which the at least two tissue engaging members are at least partially exposed from the housing”, as recited in amended independent claim 10.



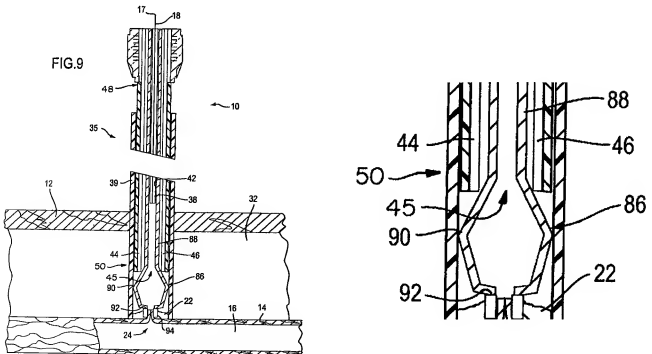
For at least this reason, *inter alia*, Applicants respectfully submit that Ratcliff fails to disclose each and every element recited in amended independent claim 10 and therefore that amended independent claim 10 is allowable under 35 U.S.C. § 102(e) over Ratcliff. As claims 11-17 and 19 depend either directly or indirectly from claim 10, for at least the reasons discussed above with respect to claim 10, *inter alia*, Applicants respectfully submit that claims 11-17 and 19 are also allowable under 35 U.S.C. § 102(e) over Ratcliff.

With regard to new independent claim claim 25, Ratcliff fails to teach or suggest, e.g., the recited “tissue engaging members adapted to cooperate to engage vascular tissue adjacent the vascular opening and position the vascular tissue in a predetermined orientation; and a pair of jaw members ... rendering the vascular tissue in adjacent relation when in a closed position of the jaw members, the jaw members movable independent of the tissue engaging members.” In contrast, the clips 414 are not movable independent of the levers 422. Rather, the levers 422 move in a radial direction, i.e., toward each other, to form the clips. (19:65-10 of Ratcliff). New claims 26-28 ultimately depend from claim 25 and are, thus, at least patentable for the reasons independent claim 25 is patentable.

Accordingly, in view of the foregoing, withdrawal of this rejection is respectfully requested.

Claim 10 stands rejected under 35 U.S.C. § 102(e) over U.S. Patent No. 6,033,427 to Lee (hereinafter “Lee”). It is respectfully submitted that the present invention embodied in claim 10 is patentable over Lee. Lee relates to a device including a tubular body member having pinching members 86 that may utilized for affecting

hemostasis and closure of a puncture site or other opening in a blood vessel. (See col. 9, lines 27-28). Each pinching member 86 has an outwardly directed lower portion 90 and a straight end portion 92 that is preferably surrounded by a removably sleeve member 94. (See *id.* at lines 28-44). In the Office Action, sleeve member 94 and lower portion 90 were respectively characterized as the “tissue engaging members” and “jaw members” recited in claim 10. Lee discloses that lower portion 90 and straight end portion 92, about which sleeve member 94 is disposed, are integrally formed, as seen below in FIG. 9 and the corresponding enlargement. (See *id.* at lines 29-32). Accordingly, upon actuation, the “tissue engaging members” 94 of Lee move concomitantly with the “jaw members” 90. Therefore, Applicants respectfully submit that Lee fails to disclose an apparatus including “at least two tissue engaging members . . . and at least two jaw members positioned adjacent said tissue engaging members and being movable independently thereof” as recited in amended independent claim 10. (Emphasis added).



With regard to new independent claim 25, this claim recites, inter-alia, “tissue engaging members adapted to cooperate to engage vascular tissue adjacent the vascular opening and position the vascular tissue in a predetermined orientation; and a pair of jaw members ... rendering the vascular tissue in adjacent relation when in a closed position of the jaw members, the jaw members movable independent of the tissue engaging members.” In contrast, the “tissue engaging members” 94 of Lee move concomitantly with the “jaw members” 90.

Accordingly, in view of the foregoing, withdrawal of this rejection is respectfully requested.

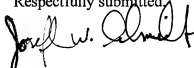
Claim 18 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Ratcliff in view of U.S. Patent No. 6,063,085 to Tay (hereinafter “Tay”). Claim 18 ultimately depends from independent claim 10 which is believed to patentable as indicated hereinabove. Accordingly, withdrawal of this rejection is respectfully requested.

Claim 10 was also rejected on the ground of non statutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,248,124. In response thereto, Applicants will file a suitable terminal disclaimer upon indication that claim 10 is otherwise allowable.

In view of the foregoing amendments and remarks, it is respectfully submitted that each of the claims pending in the application, i.e., claims 10-24, are patentably distinguishable over the art of record and are in condition for allowance.

If the Examiner should have any questions concerning this communication or feels that an interview would further prosecution, she is requested to call Applicants' undersigned attorney at her convenience.

Respectfully submitted,



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